

MAR 17 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

IGNACIO CORREA-MIRANDA,

Defendant - Appellant.

No. 04-50040

D.C. No. CR-03-01031-IEG

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Irma E. Gonzalez, District Judge, Presiding

Submitted March 8, 2006**

Before: CANBY, BEEZER and KOZINSKI, Circuit Judges.

Ignacio Correa-Miranda appeals from the 46-month sentence imposed after his guilty-plea conviction to being a deported alien found in the United States, in

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291, and vacate and remand the sentence.

Correa-Miranda contends that the district court erred when it determined that his prior conviction constituted a “felony drug trafficking offense” under U.S.S.G. § 2L1.2(b).

The district court erred by relying solely upon the presentence report in determining that Correa-Miranda’s prior conviction fit the generic definition of drug trafficking offense set forth in U.S.S.G. § 2L1.2, comment. (n.1(B)(iii)). *See United States v. Corona-Sanchez*, 291 F.3d 1201, 1212 (9th Cir. 2002) (en banc).

Accordingly, we **VACATE** and **REMAND** for resentencing.